

(ii) For engine families with annual sales from 150 to 750 units: 15 or more engines.

(iii) For engine families with annual sales above 750 units: more than 2.0 percent of the total number of engines in the engine family.

(g) *How to count defects.* (1) Track defects separately for each model year and engine family as much as possible. If information is not identifiable by model year or engine family, use good engineering judgment to evaluate whether you exceed a threshold in paragraph (e) or (f) of this section. Consider only your U.S.-directed production volume.

(2) Within an engine family, track defects together for all components or systems that are the same in all material respects. If multiple companies separately supply a particular component or system, treat each company's component or system as unique.

(3) If a possible defect is not attributed to any specific part of the engine, consider the complete engine a distinct component for evaluating whether you exceed a threshold in paragraph (e) of this section.

(4) If you correct defects before they reach the ultimate purchaser as a result of your quality-assurance procedures, count these against the investigation thresholds in paragraph (e) of this section unless you routinely check every engine in the engine family. Do not count any corrected defects as actual defects under paragraph (f) of this section.

(5) Use aggregated data from all the different sources identified in paragraph (b)(1) of this section to determine whether you exceed a threshold in paragraphs (e) and (f) of this section.

(6) If information is readily available to conclude that the possible defects identified in paragraph (b)(1) of this section are actual defects, count these toward the reporting thresholds in paragraph (f) of this section.

(7) During an investigation, use appropriate statistical methods to project defect rates for engines that you are not otherwise able to evaluate. For example, if 75 percent of the components replaced under warranty are available for evaluation, it would be appropriate to extrapolate known in-

formation on failure rates to the components that are unavailable for evaluation. Take steps as necessary to prevent bias in sampled data. Make adjusted calculations to take into account any bias that may remain.

(h) *Investigation reports.* Once you trigger an investigation threshold under paragraph (e) of this section, you must report your progress and conclusions. In your reports, include the information specified in paragraph (d) of this section, or explain why the information is not relevant. Send us the following reports:

(1) While you are investigating, send us mid-year and end-of-year reports to describe the methods you are using and the status of the investigation. Send these status reports no later than June 30 and December 31 of each year.

(2) If you find that the number of components or systems with an emission-related defect exceeds a threshold specified in paragraph (f) of this section, send us a report describing your findings within 21 days after the date you reach this conclusion.

(3) If you find that the number of components or systems with an emission-related defect does not exceed any of the thresholds specified in paragraph (f) of this section, send us a final report supporting this conclusion. For example, you may exclude warranty claims that resulted from misdiagnosis and you may exclude defects caused by improper maintenance, improper use, or misfueling. Send this report within 21 days after the date you reach this conclusion.

(i) *Future production.* If you identify a design or manufacturing defect that prevents engines from meeting the requirements of this part, you must correct the defect as soon as possible for future production of engines in every family affected by the defect. This applies without regard to whether you are required to conduct a defect investigation or submit a defect report under this section.

[69 FR 39270, June 29, 2004]

#### **§ 1068.505 How does the recall program work?**

(a) If we make a determination that a substantial number of properly maintained and used engines do not conform

to the regulations of this chapter during their useful life, you must submit a plan to remedy the nonconformity of your engines. We will notify you of our determination in writing. Our notice will identify the class or category of engines affected and describe how we reached our conclusion. If this happens, you must meet the requirements and follow the instructions in this subpart. You must remedy at your expense non-compliant engines that have been properly maintained and used, as described in § 1068.510(a)(7). You may not transfer this expense to a dealer or equipment manufacturer through a franchise or other agreement.

(b) You may ask for a hearing if you disagree with our determination (see subpart G of this part).

(c) Unless we withdraw the determination of noncompliance, you must respond to it by sending a remedial plan to the Designated Officer by the later of these two deadlines:

(1) Within 60 days after we notify you.

(2) Within 60 days after a hearing.

(d) Once you have sold an engine to the ultimate purchaser, we may inspect or test the engine only if he or she permits it, or if state or local inspection programs separately provide for it.

(e) You may ask us to allow you to conduct your recall differently than specified in this subpart, consistent with section 207(c) of the Act (42 U.S.C. 7541(c)).

(f) You may do a voluntary recall under § 1068.535, unless we have made the determination described in § 1068.535(a).

(g) For purposes of recall, *owner* means someone who owns an engine affected by a remedial plan or someone who owns a piece of equipment that has one of these engines.

[67 FR 68347, Nov. 8, 2002, as amended at 69 FR 39272, June 29, 2004; 70 FR 40516, July 13, 2005]

**§ 1068.510 How do I prepare and apply my remedial plan?**

(a) In your remedial plan, describe all of the following:

(1) The class or category of engines to be recalled, including the number of engines involved and the model year or

other information needed to identify the engines.

(2) The modifications, alterations, repairs, corrections, adjustments, or other changes you will make to correct the affected engines.

(3) A brief description of the studies, tests, and data that support the effectiveness of the remedy you propose to use.

(4) The instructions you will send to those who will repair the engines under the remedial plan.

(5) How you will determine the owners' names and addresses.

(6) How you will notify owners; include copies of any notification letters.

(7) The proper maintenance or use you will specify, if any, as a condition to be eligible for repair under the remedial plan. Describe how these specifications meet the provisions of paragraph (e) of this section. Describe how the owners should show they meet your conditions.

(8) The steps owners must take for you to do the repair. You may set a date or a range of dates, specify the amount of time you need, and designate certain facilities to do the repairs.

(9) Which company (or group) you will assign to do or manage the repairs.

(10) If your employees or authorized warranty agents will not be doing the work, state who will and describe their qualifications.

(11) How you will ensure an adequate and timely supply of parts.

(12) The effect of proposed changes on fuel consumption, driveability, and safety of the engines you will recall; include a brief summary of the information supporting these conclusions.

(13) How you intend to label the engines you repair and where you will place the label on the engine (see § 1068.515).

(b) We may require you to add information to your remedial plan.

(c) We may require you to test the proposed repair to show it will remedy the noncompliance.

(d) Use all reasonable means to locate owners. We may require you to use government or commercial registration lists to get owners' names and addresses, so your notice will be effective.